

SENATE BILL 3281
By Rochelle

AN ACT to authorize Wilson County by referendum of its voters to levy and collect a privilege tax on new development in the county in order to provide that new development contribute its fair share of the cost of providing public facilities and services made necessary by such new development.

WHEREAS, Wilson County, Tennessee has been growing at an accelerated rate during the last few years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and

WHEREAS, anticipated growth is expected to continue and accelerate due to growth both in the standard metropolitan area of Nashville and to recent and expected industrial growth in Wilson County, Tennessee; and

WHEREAS, it is expected that the county's population will continue to increase causing a demand for approximately 1,000 additional dwelling units per year; and

WHEREAS, projected growth and land use development will cause an increased demand for county-provided capital facilities such as schools, roads, jails, parks, county governmental facilities, landfills and convenience centers, etc.; and

WHEREAS, projected growth and land use development in the municipalities of Lebanon, Mt. Juliet and Watertown will cause an increased demand for city-provided capital facilities such as streets, parks, governmental facilities, fire and police stations, etc.; and

WHEREAS, the county's, and its three municipalities' present revenue raising authority of the county and its three municipalities is limited by state legislation and relies heavily on

intergovernmental transfers which are not subject to county and city control, and on property taxes, which would impose the cost of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Wilson County and its three municipalities are committed, for the benefit of both present and future county residents, to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Wilson County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the county; and

WHEREAS, the county's present population, employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, the continued expansion of the Nashville-metropolitan area represents both an extraordinary economic opportunity for the state of Tennessee as well as a potential economic burden on the existing residents of Wilson County; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Wilson County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of public facilities necessitated by new residential development on that residential development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the state of Tennessee for such additional tax measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Wilson County to be known as an adequate facilities tax; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the “Wilson County Adequate Facilities Tax”.

SECTION 2. As used in this act, unless a different meaning appears from the context:

(a) “Board of Zoning Appeals” means the board established in Wilson County pursuant to Tennessee Code Annotated, Section 13-7-106, for county applications; or the Board of Zoning Appeals of the affected municipality, if a municipal application.

(b) “Building” means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home, but excludes those buildings specified in Section 6 of this act. This definition will not pertain to buildings used for agricultural purposes.

(c) “Building Permit” means a permit for development issued in Wilson County, whether issued by the county or by any city therein.

(d) “Capital Improvement Program” means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included.

(e) “Certificate of Occupancy” means a license for occupancy of a building or structure issued in Wilson County, whether by the county or by any municipality therein.

(f) “Development” means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure which provides the floor area of a residential or non-residential use.

(g) “Dwelling Unit” means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other

room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(h) "Floor Area" means the total of the gross horizontal area for all floors, including basements, cellars, or attics which is heated and/or air conditioned living space, or designed to be finished into heated and/or air conditioned living space at a future date.

(i) "General Plan" means the official statements of the Planning Commission which sets forth major policies concerning future development of the jurisdictional area and meet the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, and 13-4-103. For the purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(j) "Governing body" means the County Commission of Wilson County, Tennessee.

(k) "Major Street or Road Plan" means the plan adopted by the Planning Commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, "the general location, character, and extent of public ways and the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways..."

(l) "Municipalities" includes the incorporated cities of Lebanon, Mt. Juliet and Watertown.

(m) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well and the singular number.

(n) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or

portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(o) "Public Buildings" means a building owned by the state of Tennessee or any agency thereof, or a political subdivision of the state of Tennessee, including but not necessarily limited to counties, municipalities, school districts and special districts, or the federal government or any agency thereof.

(p) "Public Facility or Facilities" means a physical infrastructure improvement undertaken by the county or a municipality, including, but not limited to, the following: roads and bridges, jails, workhouses and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, convenience centers, water, wastewater and drainage projects and other governmental capital improvements benefiting the citizens of the county and/or municipality.

(q) "Residential" means the development of any property for a dwelling unit or units.

(r) "Subdivision Regulations" means the regulations adopted by the Wilson County Regional Planning Commission pursuant to state statutory authorization on March 29, 1955, as subsequently amended, by which the county regulates the subdivision of land.

(s) "Zoning Resolution" means the resolution adopted by the governing body pursuant to state statutory authorization on March 5, 1990, as amended and revised, by which the county regulates the zoning, use and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Wilson County to impose a tax on new development in the county payable at the time of issuance of a building permit so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such new development.

SECTION 4. Engaging in the act of development within Wilson County, except as provided in Section 6 herein, is declared to be a privilege upon which Wilson County may, by resolution of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The governing body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the county. This capital improvements program shall include provisions for the sharing of the proceeds of this tax collected in any of the three (3) municipalities of Watertown, Lebanon and Mt. Juliet in Wilson County. The sharing of the proceeds shall be on a 50-50 basis with the county and the municipality in which the tax is collected, subject to the provisions of the next paragraph. The resolution of the governing body imposing this tax shall state the rate of tax on new development. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act. Each municipality shall be responsible for the cost, if any, of collecting the tax in the municipality.

Further, the proceeds of the tax collected within the boundaries of the Lebanon Tenth Special School District shall be shared with the Lebanon Tenth Special School District on the basis of Average Daily Attendance (ADA) as computed by state law. This share shall be deducted from the tax payable to Wilson County and the City of Lebanon. The proceeds of the tax collected on development outside the boundaries of the Lebanon Tenth Special School District shall not be shared with the Lebanon Tenth Special School District.

SECTION 6. This act shall not apply to development of:

- (a) Public buildings.
- (b) Places of worship.
- (c) Barns or outbuildings used for agricultural purposes.

(d) Replacement structures for previously existing structures destroyed by fire or other disaster.

(e) Additions to a single-family dwelling, including, but not limited to, modifying a single-wide mobile home into a double-wide mobile home.

(f) A structure owned by a nonprofit corporation which is a qualified 501(c)3 corporation under the Internal Revenue Code.

(g) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years.

(h) Buildings moved from one (1) site within the county to another site within the county.

(i) A one-time exemption may be granted for new residential development by a citizen of Wilson County, Tennessee, who was a resident of Wilson County, Tennessee, on January 1, 1996, or such resident's son or daughter, who was a resident of Wilson County, Tennessee, on January 1, 1996, and who has been a resident of Wilson County for a period of at least ten (10) continuous years preceding the application for a building permit, and who can prove that residency by voter registration in Wilson County during the applicable period of time, or by vehicle registration in Wilson County during the applicable period of time, or by owning taxable real property in Wilson County during the applicable period of time. For the purpose of this section and the use of this exemption, a citizen who is married and who seeks a building permit for a parcel of property owned by the applicant and his/her spouse, shall be considered together. A husband and wife shall not receive two (2) exemptions.

SECTION 7. For the exercise of the privilege described herein, Wilson County may impose a tax on new residential development, including residential development in the

municipalities of Lebanon, Mt. Juliet and Watertown, not to exceed seventy-five cents (\$0.75) per gross square foot of new residential development.

For the exercise of the privilege described herein, Wilson County may impose a tax on new commercial, industrial and all other non-residential development, including commercial, industrial and all other non-residential development in the cities of Lebanon, Mt. Juliet and Watertown, not to exceed twenty-five cents (\$0.25) per gross square foot of new commercial, industrial or non-residential development.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for development from the building inspector of Wilson County, Tennessee, or from the building inspector of the applicable municipality. If the building permit is issued by the county, the county building inspector shall receive payment in full in cash or other negotiable instrument as provided by resolution of the county and as approved by the county attorney. If the building permit is issued by a municipality, the municipality shall, before issuance of the building permit, receive payment in full in cash or other negotiable instrument as provided by resolution of the county and as approved by the county attorney. The municipality collecting the tax shall forward fifty percent (50%) of such tax, in accordance with the requirements of Section 5, to the Wilson County Trustee in the manner established by the governing body as provided in Section 5 and shall retain the remaining fifty percent (50%) for those purposes in accordance with Section 9. No building permit for development as herein defined shall be issued in Wilson County, or any of the three (3) municipalities located therein, unless the tax has been paid in full as provided in this act.

Upon collection of the tax by the county building inspector, the proceeds of such tax shall be transferred to the Wilson County Trustee, as other taxes are collected by him, and kept in a separate account from all other funds. These funds may be used for the repayment of principal and interest on bonds, or other forms of indebtedness, as they come due and for the purpose of building new schools and/or additions to existing schools as the governing body of

Wilson County shall deem necessary and proper, including the purchase of any necessary real estate or interest in real estate, and the development of same for school purposes.

SECTION 9. All tax funds collected by Wilson County shall be used for the purpose of providing a school building program, both the building of new schools and additions to existing schools, the need for which is reasonably related to new development. The municipal portion of any tax funds collected may be used for any municipal infrastructure purpose, established by the municipality's governing body, the need for which is reasonably related to new development.

SECTION 10. The authority to impose this privilege tax on new development in Wilson County, and its three (3) municipalities, is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land-development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. (a) Any person aggrieved by a decision of a county building official, city building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Wilson County, or the municipality, if applicable, and by notifying the official that the payment is made under protest.

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Wilson County Board of Zoning Appeals, if a county application, or the appropriate municipality's Board of Zoning Appeals, if a municipal application, or any other statutorily designated board established to hear such appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal.

(b) The Board of Zoning Appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

(c) The Board of Zoning Appeals shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(d) Hearings before the board shall proceed as follows:

(1) The building official shall explain his ruling and the reasons for his ruling.

(2) The appellant shall explain his reasons for protesting the ruling.

(3) The board may request further information from any county or municipal official, including, but not limited to, the county executive, mayor, county commissioners or committee members, city council members, the county attorney or city attorney, or the county or city planning staff. The board shall not have the power of subpoena.

(4) The board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Board of Zoning Appeals shall be final, except that either the building official or the person aggrieved may seek review of the board's actions by certiorari and supersedeas to the Chancery Court of Wilson County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Wilson County. This act shall be deemed to create an additional and alternative purpose of providing public facilities made necessary by new development in the county.

SECTION 13. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a majority vote of those voting in a referendum for the purpose of adopting a privilege tax on new development. The Wilson County Election Commission is directed to conduct this referendum simultaneously with the general election scheduled in August, 1996. All registered voters of Wilson County, Tennessee, shall be entitled to vote in the referendum. The approval or non-approval of the referendum vote shall be certified in the manner similar to all other elections and a simple majority of those voting in the referendum shall be required for approval. If the provisions of this act are adopted by referendum, then the county legislative body of Wilson County, Tennessee, shall implement the provisions of this act by resolution.

SECTION 15. Should this tax on new development be approved by the voters at a referendum at the August, 1996, general election, a resolution shall be presented to the Wilson County Commission for its consideration on adopting and implementing the provisions of the Southern Building Codes and the Southern Plumbing Codes on or before July 1, 1997. Additionally, a resolution shall be presented to the Wilson County Commission for its consideration on adopting and implementing the procedures for groundwater testing in Wilson County, Tennessee, on or before July 1, 1997.

SECTION 16. For the purpose of approving or rejecting the provisions of the act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 14.

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